IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE AT NASHVILLE

February 14, 2006 Session

STATE OF TENNESSEE v. CALVIN WAYNE CARUTHERS, In Re: WHEELER BONDING COMPANY, INC.

Appeal from the Criminal Court for Davidson County No. 92-A-340 Steve Dozier, Judge

No. M2005-00953-CCA-R3-CD - Filed June 26, 2006

The appellant, Wheeler Bonding Company, Inc. (hereinafter "Wheeler"), appeals the order of the Davidson County Criminal Court requiring Wheeler to pay a portion of Defendant Calvin Wayne Caruthers' bond premium to the criminal court clerk in satisfaction of the defendant's restitution obligation from a 1992 theft conviction. The state concedes Wheeler's claim, and we reverse and vacate the criminal court's order.

Tenn. R. App. P. 3; Judgment of the Criminal Court is Reversed and Vacated.

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which GARY R. WADE, P.J., and ROBERT W. WEDEMEYER, J., joined.

Joel H. Moseley, Sr., Nashville, Tennessee, for the Appellant, Calvin Wayne Caruthers.

Paul G. Summers, Attorney General & Reporter; Elizabeth B. Marney, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; and Pamela Anderson, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

Pursuant to the defendant's guilty plea in 1992, the trial court convicted him of theft, a Class A misdemeanor, suspended an 11-month, 29-day sentence, and ordered the defendant to pay restitution in the amount of \$565. When the defendant was arrested for aggravated assault in 1993, a warrant alleging violation of the theft probation was filed, but apparently no action was taken on the violation warrant before the defendant was convicted in 1993 and sentenced to serve 12 years in the Department of Correction (hereinafter DOC) on the new charge. When the defendant was released by DOC in 2004, he was arrested on the outstanding probation-violation warrant and obtained a \$12,000 bail bond from Wheeler by paying \$1,235 in bond premium. When the trial court conducted a hearing, the prosecutor acknowledged that, under the circumstances, the violation warrant should have been withdrawn. Expressing concern that the defendant pay his restitution of

\$565, the court entered an order directing Wheeler to pay \$565 of the \$1,235 bond premium received from the defendant's family to the trial court clerk to satisfy the defendant's restitution obligation. The violation warrant was apparently dismissed. Wheeler appeals the order requiring the partial premium refund in the form of payment of restitution.

The parties agree that any power of the trial court to enter the pay-over order is governed by Tennessee Code Annotated section 40-11-315:

- (a) Whenever any professional bondsman, as defined in § 40-11-301, furnishes bail, makes bond or furnishes security for the appearance, before any court in this state, of any person charged with a criminal offense or a violation of any law, by means of a contract for a specified period of time, in which the bondsman acts as surety for such appearance, the premium on such contract shall be reduced or refunded upon surrender of the person charged with such criminal offense or violation of a law in an amount in direct proportion of the percentage of the unexpired term of the contract to the total amount of the contract to the total amount of the premium, unless such person is arrested on an additional criminal charge while released on bail or if the bond or security is forfeited or revoked . . . or if the court accepts the surrender of the defendant based upon [specified grounds].
- (b) If such premium is payable in equal installments, no further payment shall be due or payable upon surrender. . . .

Tenn. Code Ann. § 40-11-315 (2003). The parties further agree that code section 40-11-315 authorizes refunds of bond premiums only when a defendant surrenders, a circumstance not prevailing in the present case. Specifically, in its brief, the state concedes that the trial court was without statutory authority to order Wheeler to pay over a part of the defendant's bond premium.

In view of the wording of the statute and the position of the state, we reverse and vacate the trial court's order.

JAMES CURWOOD WITT, JR., JUDGE